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OFFICE OF PETITIONS

In re Application of	:	
David Kammer	:	
Application No. 10/769,176	:	
Filed: January 29, 2004	:	DECISION ON PETITION
Attorney Docket No.	:	UNDER 37 C.F.R. § 1.181(A)
3195.PALM.PSI.C	:	
Title: EFFICIENT SERVICE	:	
REGISTRATION FOR LEGACY	:	
APPLICATIONS IN A BLUETOOTH	:	
ENVIRONMENT	:	

This is a decision on the "LETTER REQUESTING WITHDRAWAL OF IMPROPER NOTICE OF ABANDONMENT UNDER MPEP 7011.03 AND 37 C.F.R. § 1.137," filed on October 17, 2006, which is properly treated as a petition pursuant to 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment¹. A duplicate of communication was submitted on December 31, 2007.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed March 14, 2006, which set a shortened statutory period for reply of three months. No response was received, and no extensions of

¹ The Office regrets not processing this petition sooner. For future reference, Petitioner may wish to consider clearly labeling such a communication as a petition, so that it is immediately brought to the attention of the proper department within the Office.

time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on June 15, 2006. A notice of abandonment was mailed on October 6, 2006.

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. § 1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Section 503 of the MPEP, entitled Application Number and Filing Receipt, sets forth, *in pertinent part*:

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description,

claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as prima facie evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as prima facie evidence of receipt of that item in the USPTO.

ANALYSIS

With the present petition, Petitioner has asserted that a response was submitted to the Office on September 14, 2006. Petitioner has submitted a copy of this submission, along with a postcard receipt that establishes that both a "Response to Office Action" and a "Petition for Extension of Time" were received in the Office on October 6, 2006.

Moreover, Petitioner has further included a copy of this submission, and it is noted that it contains a certificate of mailing dated September 14, 2006.

Additionally, it is noted that this same response has been located in the electronic file; therefore, it is clear that this response was received on October 6, 2006. Furthermore, Office records confirm that the fee that is associated with the filing of a request for a three-month extension of time was received in the Office on December 1, 2006.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that a response was timely submitted.

Accordingly, the petition under 37 C.F.R. §1.181(a) is GRANTED. The holding of abandonment is WITHDRAWN.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the response to the non-final Office action that was received on October 6, 2006 can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225². All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

² Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).